In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No.2905 of 2006
Date of Decision: 25.9.2006

Charanjit Singh and others **---Petitioners**

Vs.

State of Haryana and others **---Respondents**

Coram: **Hon'ble Mr. Justice M.M.KUMAR**
Hon'ble Mr. Justice M.M.S.BEDI

Present: Mr. D.S. Pheruman, Advocate,
for the petitioners.
Mr. Harish Rathee, Sr. DAG, Haryana
for respondents No. 1 and 3.

Mr.D.S.Rawat, Advocate
for respondents No. 4 & 5.

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M.M.KUMAR J.

The question whether ad hoc employee is to give way to a regularly appointed employee who has been appointed after following the due process of law has once again been raised in the instant writ petition filed under Article 226 of the Constitution. The petitioners who have been selected as Lecturer in Commercial Practice(now designated as Office Management and Computer Application) and have been duly recommended by the Haryana Public Service Commission have prayed that the communication dated 02-02-2005 declining his prayer for appointment in preference to a person working on ad hoc basis be quashed.

The undisputed facts are that on 21.09.2004, an advertisement was issued for filling up various posts of Lecturers in respect of different subjects. The petitioners who are duly qualified and eligible, had applied

for the posts. They appeared for interview before the Haryana Public Service Commission and their names were duly recommended vide letter dated 4.12.2004(Annexure P-1). The post of Lecturer in Commercial Practice is governed by Haryana Technical Education Department (Group'B') Service Rules, 1986. Although there is no provision for making any ad hoc appointment yet respondents No. 3, 4 and others were working on the posts of Lecturer in Commercial Practice as stop gap arrangement. There is a specific stipulation in their appointment letters that they were to be relieved as soon as regularly selected persons join the posts held by them. A copy of appointment letter of one Shri Gian Chand Sharma has been placed on record as Annexure P-2. It is asserted that Sarvshri Tara Chand and Jatinder Singh filed Civil Writ Petition No.19571 of 2002 and 407 of 2003 to seek regularisation of their services as they were working as stop gap arrangement/ad hoc basis. The Writ Petition filed by Tara Chand alongwith other petitioners were dismissed by this Court vide order dated 23.07.2004(Annexure P-3). Those persons filed S.L.P. Nos. 14994 and 14997 of 2004 which were also dismissed on 09.08 of 2004(Annexure P-4). It is asserted that after the dismissal of their S.L.Ps., the private respondents are not left with any right to continue to hold the posts. In any case, it has been asserted that the respondents have created three more posts on 02.01.2006 as is evident from the entries 2,9 and 12 of order Annexure P-5. Therefore, it has been claimed that the posts are lying vacant and the petitioners are awaiting for their appointment.

The petitioners through their counsel sent a legal notice on 7.1.2005(Annexures P-6) which has been decided by the impugned

communication dated 02.02. 2005 (Annexure P-8) by observing as under:-

> "Reference your notice dated 7.1.2005 on the subject noted above.
>
> In this connection, it is intimated that Sh. G.C.Sharma who is presently working as Lecturer in Commercial Practice (M.O.P.) on ad hoc basis in this department has filed C.M. No. 1449/2003 in CWP No. 3958/2002 in the Hon'ble Punjab and Haryana High Court. The Hon'ble High Court has passed the following interim orders in the CWP:-
>
> > "In the meantime the respondents shall maintain status quo qua termination of services of petitioner till further orders"
>
> 30.1.2003 Sd/-
>
> Mehtab S.Gill, Judge
>
> It is further added that this department has submitted papers to Advocate General, Haryana Chandigarh for filing CM in the Punjab and Haryana High Court to vacate the operation of the above said order dated 30.1.2003 vide this office memo No. 224/E-I dated 19.1.2005."

The stand of the respondents in the written statement is that the recommendations in respect of the petitioners have been duly made by the

Haryana Public Service Commission vide their letter dated 04.12.2004 and mere recommendation did not create any right in their favour. It has further been pointed out that Sarvshri Tara Chand, Jatinder Singh and Gian Chand Sharma have been working on ad hoc basis on the posts of Lectures in Commercial Practice and unless their services are terminated the petitioners cannot be accommodated. It has also been stated that in favour of Gian Chand Sharma an order of status quo is in operation and he is the junior most after Tara Chand and Jatinder Singh. It has further been asserted that Civil Misc. Application bearing No. 1501 of 2005 in CWP No. 3958 of 2002 was filed by the respondents for vacation of interim order dated 30.01.2003 operating in favour of Gian Chand Sharma and no decision has been taken by this Court so far. Therefore, the petitioners cannot be considered for appointment on regular basis as all the three posts are occupied by the afore-mentioned three persons. In respect of the newly created three posts, it has been asserted that the names of the petitioners were not recommended against those posts and, therefore, they have no right to be appointed.

The stand of respondents No. 4 and 5 is that the Constitutional Bench of the Hon'ble Supreme Court in **Secretary, State of Karnataka Vs. Uma Devi** (2006) 4 SCC 1 has categorically held that those who have completed more than 10 years service deserved to be regularised as one time measure provided their appointments are irregular and not illegal.

Having heard the learned counsel at some length, we are of the view that the claim made by the petitioners is meritorious. The petitioners

have been duly selected by following the 1986 Rules framed under Article 309 of the Constitution. According to Rule 9(k), the appointment in the case of Lecturer in Commercial Practice is to be made by direct recruitment. Accordingly a requisition was sent to the Haryana Public Service Commission. The posts were advertised and after considering the competing claims of various candidates, the petitioners were found to be meritorious and accordingly recommendations in their favour were made to respondents No. 1, 2 and 3 for issuance of appointment letters to them. It has been repeatedly emphasised that the public service constitutes backbone of good government and, therefore, satisfactory service condition alongwith protection of their tenure has to be ensured. This can be achieved only by adopting a procedure which results into selection of the best available in the field. In order to achieve the aforementioned object and use the optimum talent available the State has framed Rules of 1986 under Article 309 and bodies like Public Service Commissions have been created under Article 315 of the Constitution. The aforementioned view has been amply supported by the observations made in **Union Public Service Commission Vs. Girish Jayanti Lal Vaghela** (2006) 2 SCC 482, which reads as under:-

> " 12. Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional right to

equality of opportunity and employment in public offices. The words ' employment' or 'appointment' cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation, etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution (see B.S.Minhas Vs. Indian Statistical Institute).”(emphasis added)

The Constitutional Bench of Hon'ble the Supreme Court in the case of **Uma Devi and others (**supra),after detailed discussion, has concluded that the rule of equality in public employment is the basic feature of our Constitution and observed as under:-

> "Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee."

The principles laid down in the aforementioned judgments do not leave any manner of doubt that the petitioners have been selected in accordance with 1986 Rules after advertisement of posts and holding of interview where claims of all the applicants who were eligible have been considered by the Public Service Commission. Their selection is consistent with the provisions of Articles 14 and 16 (1) of the Constitution as has been opined by Hon'ble the Supreme Court in the aforementioned two judgments.

The stand taken by the respondents in their written statement is intriguing inasmuch as they have defended the ad hoc appointment of respondents No. 4 and 5 despite the fact that their writ petitions namely C.W.P. No. 19571 of 2002 and C.W.P.No.407 of 2003 for regularisation of their services were dismissed and the order passed by the Division Bench of this Court on 23.7.2004 has been placed on record as Annexure P-3. The aforementioned order of the Division Bench has been upheld by the Hon'ble Supreme Court as is evident from the perusal of order dated 23.07.2004(Annexure P-4).

There is no reason for the respondent State to take a stand supporting respondents No. 4 and 5 and we are constraint to observe that such a stand defies ignorance. It is strange that on the basis of status quo order granted by this Court on 30.01. 2003 in C.M.No. 1449 of 2003 in CWP No. 3958 of 2002 in favour of one Gian Chand Sharma, it has been asserted by respondents that none of the three posts are available to be filled up by the regularly selected candidates like the petitioners. We find that two posts of Lecturers in Commercial Practice occupied by respondents No. 4 and 5 have to be offered to the petitioners especially when they had already lost litigation before a Division Bench of this Court and the orders attained finality after dismissal of their Special Leave Petitions as stated above. The third post can also be filled up by offering one of the three newly created posts to the petitioners. The application filed by the respondents seeking vacation of stay order dated 30.01.2003 should have been pursued but that would not constitute any impediment to give

appointment to the petitioners as the posts are admittedly available. The adjustment of the post occupied by Shri Gian Chand Sharma may be made if the respondents succeed in vacation of stay order passed by this Court. The observations made by us with regard to the ad hoc appointment andrights of respondents No. 4 and 5 are also supported by the judgment of the Constitutional Bench of Hon'ble the Supreme Court in the case of **Uma Devi** (supra). Moreover, the post of Lecturer is a class-II post for which no policy of regularisation would be available as has been held in the case of **Arundhati Ajit Pargaonkar (Dr.) V. State of Maharashtra** 1994 Suppl. (3) SCC 380 and **Dr. Chanchal Goyal Vs. State of Rajasthan (2003)3 SCC 485.**

In view of the above, the instant writ petition is allowed with costs. The communication dated 02-02-2005 is set aside and a direction is issued to the respondents to issue appointment letters to all the three petitioners as Lecturers in Commercial Practice(Office Management and Computer Application) within a period of two months from the date a certified copy of this order is received by them. We further hold that respondents No. 4 and 5 have no right to hold two posts or to seek regularisation. Accordingly their appointment is set aside as per the stipulation in their letter of appointment which postulate their relieving on the arrival of regularly selected candidates from Public Service Commission. The petitioners shall be given appointment from the date other persons selected in pursuance to the advertisement have been given appointment by giving them the benefit of seniority, pay fixation and increments etc. However, the petitioners shall not be entitled to arrears of

salary from the date of appointment till the date of filing of the writ petition i.e. 1.3.2006. Accordingly they shall be entitled to payment of salary from 01.03.2006. The petitioners are also held entitled to their costs which are assessed at Rs. 10,000/-.

(M.M.KUMAR)
JUDGE

(M.M.S.BEDI)
JUDGE

Sept. 25, 2006
paramjit